

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-C2-2021-004 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-C2-2021-004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-C2-2021-004 and should be submitted on or before March 11, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91110; File No. SR-NYSENAT-2021-02]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Schedule of Fees and Rebates

February 11, 2021.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 (the "Act") ² and Rule 19b-4 thereunder, ³ notice is hereby given that on February 1, 2021, NYSE National, Inc. ("NYSE National" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Schedule of Fees and Rebates ("Fee Schedule") to modify the requirements to qualify for the Adding Tier 1 and 2 and Removing Tier 1. The Exchange proposes to implement the rule change on February 1, 2021. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at

the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Schedule of Fees and Rebates ("Fee Schedule") to modify the requirements to qualify for the Adding Tier 1 and 2 and Removing Tier 1.

The proposed changes respond to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing and liquidity-removing orders by offering further incentives for ETP Holders to send additional displayed and non-displayed liquidity to the Exchange.

The Exchange proposes to implement the rule change on February 1, 2021.

Current Market and Competitive Environment

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."⁴

As the Commission itself recognized, the market for trading services in NMS stocks has become "more fragmented and competitive."⁵ Indeed, equity trading is currently dispersed across 16 exchanges,⁶ 31 alternative trading systems,⁷ and numerous broker-dealer

⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (S7-10-04) (Final Rule) ("Regulation NMS").

⁵ See Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7-05-18) (Transaction Fee Pilot for NMS Stocks Final Rule) ("Transaction Fee Pilot").

⁶ See Cboe Global Markets, U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/. See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html>.

⁷ See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. Although 54 alternative trading systems were registered with the Commission as of July 29, 2019, only 31 are currently trading. A list of alternative trading systems registered with the

Continued

¹⁵ 17 CFR 200.30-3(a)(12).

¹⁶ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

internalizers and wholesalers. Based on publicly-available information, no single exchange has more than 16% of the market.⁸ Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange's share of executed volume of equity trades in Tapes A, B and C securities is less than 2%.⁹

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain products, in response to fee changes. While it is not possible to know a firm's reason for moving order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange trading venues to which a firm routes order flow. These fees vary month to month, and not all are publicly available. With respect to non-marketable order flow that would provide liquidity on an exchange, ETP Holders can choose from any one of the 16 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The Exchange utilizes a "taker-maker" or inverted fee model to attract orders that provide liquidity at the most competitive prices. Under the taker-maker model, offering rebates for taking (or removing) liquidity increases the likelihood that market participants will send orders to the Exchange to trade with liquidity providers' orders. This increased taker order flow provides an incentive for market participants to send orders that provide liquidity. The Exchange generally charges fees for order flow that provides liquidity. These fees are reasonable due to the additional marketable interest (in part attracted by the Exchange's rebate to remove liquidity) with which those order flow providers can trade.

Proposed Rule Change

To respond to this competitive environment, the Exchange proposes the following changes to its Fee Schedule designed to provide order flow providers with additional incentives to route liquidity-providing order flow to

the Exchange. As described above, ETP Holders with liquidity-providing order flow have a choice of where to send that order flow.

Proposed Changes to Adding Tier 1 and Adding Tier 2

Under current Adding Tier 1, ETP Holders that add liquidity to the Exchange in securities with a per share price of \$1.00 or more and that have at least 0.25% or more Adding ADV as a percentage of US CADV are charged a fee of \$0.0020 per share for adding displayed orders in Tape A, B and C securities and \$0.0024 per share for adding non-displayed orders in Tape A, B and C securities.

The Exchange proposes to modify the requirements to qualify for Adding Tier 1 by adopting an alternative qualification basis for the Adding Tier 1 fee. As proposed, ETP Holders would qualify for the current fees by having at least 0.25% or more Adding ADV as a percentage of US CADV or at least 30 million shares of Adding ADV. The Exchange does not propose any changes to the Adding Rate for Adding Tier 1, and the rate for orders that add liquidity under the Adding Tier 1 would remain unchanged.

Similarly, under current Adding Tier 2, ETP Holders that add liquidity to the Exchange in securities with a per share price of \$1.00 or more and that have at least 0.13% or more Adding ADV as a percentage of US CADV are charged a fee of \$0.0022 per share for adding displayed orders in Tape A, B and C securities.

The Exchange proposes to revise Adding Tier 2 by adopting an alternative qualification basis for the tier. As proposed, ETP Holders would qualify for the current rebate by having at least 0.13% or more Adding ADV as a percentage of US CADV or at least 16 million shares or more Adding ADV. The Exchange does not propose any changes to the Adding Rate for Adding Tier 2, and the rate for such orders that add liquidity under the Adding Tier 2 would remain unchanged.

The Exchange believes that introducing alternative criteria for ETP Holders to qualify for Adding Tier 1 and Adding Tier 2 will allow greater numbers of ETP Holders to potentially qualify for the tier, and will incentivize more ETP Holders to route their liquidity-providing order flow to the Exchange in order to qualify for the tier. This in turn would support the quality of price discovery on the Exchange and provide additional price improvement opportunities for incoming orders. The Exchange believes that by correlating the amount of the fee to the level of

orders sent by an ETP Holder that add liquidity, the Exchange's fee structure would incentivize ETP Holders to submit more orders that add liquidity to the Exchange, thereby increasing the potential for price improvement to incoming marketable orders submitted to the Exchange.

As noted above, the Exchange operates in a competitive environment, particularly as relates to attracting non-marketable orders, which add liquidity to the Exchange. The Exchange does not know how much order flow ETP Holders choose to route to other exchanges or to off-exchange venues. Based on the profile of liquidity-adding firms generally, the Exchange believes that additional ETP Holders could qualify for the tiered rate under the new qualification criteria if they choose to direct order flow to, and increase quoting on, the Exchange. However, without having a view of ETP Holders' activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any additional ETP Holders directing orders to the Exchange in order to qualify for the Adding Tier 1 and Adding Tier 2 rates.

The Exchange proposes the non-substantive change of deleting "or more" following the amount of Adding ADV as a percentage of US CADV required to qualify for the Adding Tier 1, Adding Tier 2, Adding Tier 4, Adding Tier 4 and Non-Displayed Adding Tier 1. The designation "at least" before the relevant amount of Adding ADV in each tier renders the phrase "or more" after the amount redundant.

Proposed Changes to Removing Tier 1

Under current Removing Tier 1, the Exchange provides a rebate of \$0.0030 per share to ETP Holders that remove liquidity from the Exchange in securities with a per share price of \$1.00 or more and that have a combined Adding ADV and Removing ADV of at least 0.18% as a percentage of US CADV and at least 250,000 of Adding ADV.

The Exchange proposes to revise Removing Tier 1 by adopting an alternative qualification basis for the tier. As proposed, ETP Holders would qualify for the current rebate by having at least 250,000 Adding ADV and a combined Adding ADV and Removing ADV of at least (1) 0.18% as a percentage of US CADV, or (2) 21.5 million shares ADV. The Exchange does not propose any changes to the Removing Rate for Orders that removed liquidity that qualify for Removing Tier 1, and the rate for such orders under

Commission is available at <https://www.sec.gov/foia/docs/atlslist.htm>.

⁸ See Cboe Global Markets U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

⁹ See *id.*

Removing Tier 1 would remain unchanged.

The Exchange believes that providing an alternative way for ETP Holders to qualify for Removing Tier 1 of at least 21.5 million shares ADV will allow greater numbers of ETP Holders to qualify for the tier, and will incentivize more ETP Holders to route liquidity-removing order flow to the Exchange in order to qualify for the tier. This is turn would support the quality of price discovery on the Exchange and provide additional price improvement opportunities for incoming orders. As described above, ETP Holders with liquidity-removing order flow have a choice of where to send that order flow. The Exchange believes that as a result of the proposed change to Removing Tier 1, more ETP Holders will choose to route their liquidity-removing order flow to the Exchange in order to qualify for the credit for removing liquidity associated with Removing Tier 1 given that the requirements to qualify have been reduced.

As noted, the Exchange operates in a competitive environment. The Exchange does not know how much order flow ETP Holders choose to route to other exchanges or to off-exchange venues. Based on the profile of liquidity-adding firms generally, the Exchange believes that additional ETP Holders could qualify for the tiered rate under the new qualification criteria if they choose to direct order flow to, and increase quoting on, the Exchange. Without having a view of ETP Holders' activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any additional ETP Holders directing orders to the Exchange in order to qualify for the Removing Tier 1 rate.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that ETP Holders would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹¹ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly

discriminate between customers, issuers, brokers or dealers.

The Proposed Change Is Reasonable

As discussed above, the Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."¹² While Regulation NMS has enhanced competition, it has also fostered a "fragmented" market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that "such competition can lead to the fragmentation of order flow in that stock."¹³

Given the current competitive environment, the Exchange believes that the proposal represents a reasonable attempt to attract additional order flow to the Exchange. Specifically, the Exchange believes that the proposed revisions to Adding Tiers 1 and 2 and Removing Tier 1 are reasonable because they would promote execution opportunities for ETP Holders routing order flow to the Exchange.

The Exchange believes that the proposal as a whole represents a reasonable effort to promote price improvement and enhanced order execution opportunities for ETP Holders. All ETP Holders would benefit from the greater amounts of liquidity on the Exchange, which would represent a wider range of execution opportunities.

The Exchange further believes that removing a redundant phrase from the Adding Tier 1, Adding Tier 2, Adding Tier 4, Adding Tier 4 and Non-Displayed Adding Tier 1 would also add clarity and transparency to the Schedule of Fees and Rebates.

The Proposal Is an Equitable Allocation of Fees

The Exchange believes the proposed rule change equitably allocates its fees among its market participants. The proposed change would continue to encourage ETP Holders to both submit additional liquidity to the Exchange and execute orders on the Exchange, thereby contributing to robust levels of liquidity, to the benefit of all market participants.

The Exchange believes that modifying Adding Tiers 1 and 2 and Removing Tier 1 would encourage the submission and removal of additional liquidity from the Exchange, thus enhancing order execution opportunities for ETP Holders from the substantial amounts of liquidity present on the Exchange. All ETP Holders would benefit from the greater amounts of liquidity that would be present on the Exchange, which would provide greater execution opportunities.

The Exchange believes the proposed rule change would also improve market quality for all market participants seeking to remove liquidity on the Exchange and, as a consequence, attract more liquidity to the Exchange, thereby improving market-wide quality. The proposal neither targets nor will it have a disparate impact on any particular category of market participant.

Specifically, the Exchange believes that the proposal constitutes an equitable allocation of fees because all similarly situated ETP Holders and other market participants would be eligible for the same general and tiered rates and would be eligible for the same fees and credits. Moreover, the proposed change is equitable because the revised fees would apply equally to all similarly situated ETP Holders.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, ETP Holders are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value.

Moreover, the proposal neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes that the proposal does not permit unfair discrimination because the proposal would be applied to all similarly situated ETP Holders and all ETP Holders would be subject to the same modified Adding Tiers 1 and 2 and Removing Tier 1. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by

¹² See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7-10-04) (Final Rule) ("Regulation NMS").

¹³ See Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7-02-10) (Concept Release on Equity Market Structure).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4) & (5).

the proposed allocation of fees and credits.

The Exchange further believes that the proposed changes would not permit unfair discrimination among ETP Holders because the tiered rates are available equally to all ETP Holders. As described above, in today's competitive marketplace, order flow providers have a choice of where to direct liquidity-providing order flow, and the Exchange believes there are additional ETP Holders that could qualify if they chose to direct their order flow to the Exchange.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,¹⁴ the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional liquidity and order flow to a public exchange, thereby enhancing order execution opportunities for ETP Holders. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."¹⁵

Intramarket Competition. The proposed change is designed to attract additional order flow to the Exchange. As described above, the Exchange believes that the proposed change would provide additional incentives for market participants to route liquidity-providing and liquidity-removing orders to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages ETP Holders to send orders, thereby contributing to robust levels of liquidity. The proposed revised fees would be available to all similarly-situated market participants, and thus, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem fee levels at those other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)¹⁶ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁷ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁸ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSENAT-2021-02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSENAT-2021-02. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSENAT-2021-02 and should be submitted on or before March 11, 2021.

¹⁴ 15 U.S.C. 78f(b)(8).

¹⁵ Regulation NMS, 70 FR at 37498-99.

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(2).

¹⁸ 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-03215 Filed 2-17-21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91112; File No. SR-PEARL-2020-30]

Self-Regulatory Organizations; MIAX PEARL, LLC; Order Granting Approval of a Proposed Rule Change To Amend the Exchange's By-Laws in Connection With an Equity Rights Program

February 11, 2021.

I. Introduction

On November 24, 2020, MIAX PEARL, LLC (the "Exchange" or "MIAX PEARL") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the Amended and Restated By-Laws of MIAX PEARL (as amended, the "MIAX PEARL Amended and Restated By-Laws") to correspond with an Equity Rights Program recently established by the Exchange. The proposed rule change was published for comment in the *Federal Register* on December 9, 2020.³ On January 21, 2021, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule changes, or institute proceedings to determine whether to disapprove the proposed rule changes.⁵ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Background and Description of the Proposed Rule Change

On August 14, 2020, the Commission approved a proposed rule change to adopt rules governing the trading of equity securities on the Exchange and establish a platform for the trading of

equity securities referred to as MIAX PEARL Equities.⁶ On August 20, 2020, the Exchange filed an immediately effective proposed rule change to establish an Equity Rights Program ("ERP"),⁷ pursuant to which Units representing the right to acquire equity in the Exchange's parent holding company, Miami International Holdings, Inc. ("MIH"), were issued to participating Exchange Members in exchange for the prepayment of certain Exchange fees and the achievement of certain liquidity volume thresholds on MIAX PEARL Equities over a 42-month period.⁸ In that August 2020 filing to implement the ERP, the Exchange stated that "[w]hen a participating Member acquires a certain number of [U]nits, the Member can appoint one director to the MIAX PEARL Board [of Directors]." ⁹ In this filing, the Exchange proposes to amend its By-Laws to provide for the right of such Exchange Members ¹⁰ participating in the ERP to nominate or appoint a representative to the MIAX PEARL Board of Directors ("PEARL Board" or "Board"), as well as to make other changes, including certain non-substantive changes.¹¹

Specifically, the Exchange proposes to amend its By-Laws to provide that an ERP Member ¹² (either by itself or with

its affiliates) that is not otherwise represented on the PEARL Board may have the right to nominate one ERP Director ¹³ or appoint an Observer ¹⁴ to the Board, as applicable.¹⁵ As proposed, ERP Directors will be classified as "Industry Directors" ¹⁶ with attendant voting rights, while Observers will be invited to attend meetings of the Board in a non-voting Observer capacity.¹⁷

an ERP Director or an Observer position." See also Article I(l) of the MIAX PEARL Amended and Restated By-Laws, defining "ERP Agreement" as "the agreement between the Exchange's parent holding company, MIH, and ERP Members dated September 11, 2020 pursuant to which Units were issued;" and Article I(pp) of the MIAX PEARL Amended and Restated By-Laws, defining "Unit" as "the securities issued pursuant to the ERP Agreement."

¹³ See Article I(m) of the MIAX PEARL Amended and Restated By-Laws, defining "ERP Director" as "a MIAX PEARL Equities Industry Director who has been nominated by an ERP Member and appointed to the Board of Directors."

¹⁴ See Article I(gg) of the MIAX PEARL Amended and Restated By-Laws, providing that "Observer" has the meaning set forth in Article II, Section 2.2 of the [MIAX PEARL Amended and Restated] By-Laws. As described further below, an "Observer" is a person, appointed pursuant to Section 2.2 of the MIAX PEARL Amended and Restated By-Laws that "may be invited to attend meetings of the Board in a non-voting observer capacity."

¹⁵ See Article II, Section 2.2(e) of the MIAX PEARL Amended and Restated By-Laws. The ERP Member's right to nominate a Director or appoint an Observer pursuant to amended Section 2.2(e) will be perpetual, subject to the certain conditions discussed below. See Notice, *supra* note 3, 85 FR at 79254.

¹⁶ See Article I(t) of the MIAX PEARL Amended and Restated By-Laws, defining "Industry Director" to mean "a Director who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than 10% of the equity of a broker or dealer, and the broker or dealer accounts for more than 5% of the gross revenues received by the consolidated entity; (iii) owns more than 5% of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed 10% of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute 20% or more of the professional revenues received by the Director or 20% or more of the gross revenues received by the Director's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50% or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20% or more of the professional revenues received by the Director or member or 20% or more of the gross revenues received by the Director's or member's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Company or any affiliate thereof or has had any such relationship or provided any such services at any time within the prior three years."

¹⁷ See Article II, Section 2.2(g)(iii) of the MIAX PEARL Amended and Restated By-Laws, providing

⁶ See Securities Exchange Act Release Nos. 88132 (February 6, 2020), 85 FR 8053 (February 12, 2020) (SR-PEARL-2020-03) (Notice of Filing of a Proposed Rule Change to Adopt Rules Governing the Trading of Equity Securities); and 89563 (August 14, 2020), 85 FR 51510 (August 20, 2020) (Order Approving Proposed Rule Change to Establish Rules Governing the Trading of Equity Securities).

⁷ See Securities Exchange Act Release No. 89730 (September 1, 2020), 85 FR 55530 (September 8, 2020) (SR-PEARL-2020-10) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Implement a Second Equity Rights Program) ("ERP Notice").

⁸ See ERP Notice, *supra* note 7, 85 FR at 55530-31. In the ERP Notice, the Commission noted that MIAX PEARL would need to submit a separate proposed rule change to make changes to its corporate governance documents to accommodate aspects of the proposal that involve or affect the MIAX PEARL Board of Directors. See ERP Notice, *supra* note 7, 85 FR at 55532, n.16.

⁹ See ERP Notice, *supra* note 7, 85 FR at 55532.

¹⁰ See Article I(p) of the MIAX PEARL Amended and Restated By-Laws, defining "Exchange Member" as "any registered broker or dealer that has been admitted to membership in the national securities exchange operated by [MIAX PEARL]."

¹¹ See Notice, *supra* note 3, 85 FR at 79255. The non-substantive changes include deletion from the current by-laws of provisions that specifically referenced past deadlines and events that have since occurred and deletion of the definition of the term "Exchange Contract" in Article I(m) of the current By-Laws because the term is not used therein or in the MIAX PEARL Amended and Restated By-Laws.

¹² See Article I(n) of the MIAX PEARL Amended and Restated By-Laws, defining "ERP Member" as "an Exchange Member who acquired Units pursuant to an ERP Agreement sufficient to acquire

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 90563 (December 3, 2020), 85 FR 79252 ("Notice").

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 90962, 86 FR 7317 (January 27, 2021). The Commission designated March 9, 2021, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule changes.

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